

No. 15933 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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LEWIS F. BLAGG,

Appellant,

vs.

IRVING I. BASS, Trustee in Bankruptcy of the  
Estate of Lewis F. Blagg, Bankrupt,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California  
Central Division

FILED

JUN 16 1958



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**Transcript of Record**

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**Appeal from the United States District Court for the  
Southern District of California  
Central Division**

THE  
MUSEUM OF  
NATURAL HISTORY

OFFICE OF THE DIRECTOR, MUSEUM OF NATURAL HISTORY, NEW YORK

THE MUSEUM OF NATURAL HISTORY, NEW YORK  
DEPARTMENT OF AGRICULTURE, NEW YORK

## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

**PAGE**

Attorneys, Names and Addresses of .....	1
Certificate by the Clerk .....	73
Certificate on Review .....	25
Debtor's Petition .....	3
Exhibits, Bankrupt's:	
No. 1—Findings of Fact, Conclusions of Law, Judgment and Decree .....	38
2—Declaration of Homestead Dated December 19, 1956 .....	42
Exhibits, Trustee's:	
A—Declaration of Homestead Dated De- cember 18, 1956 .....	65
B—Declaration of Abandonment of Home- stead .....	68
Findings of Fact, Conclusions of Law Re Ob- jections to Trustee's Report of Exempt Prop- erty .....	16
Memorandum Opinion Re Objections to Trus- tee's Report of Exempt Property .....	10
Notice of Appeal .....	33

INDEX	PAGE
Notice of Entry of Order .....	33
Notice of Filing Certificate on Review .....	24
Objections .....	8
Orders of Adjudication and of General Reference .....	6
Order on Objections to Trustee's Report of Exempt Property .....	20
Order Sustaining Referee on Review .....	31
Petition for Review .....	22
Points to Be Relied Upon on Appeal .....	34
Transcript of Proceedings .....	36
Witness:	
Blagg, Lewis F.	
—direct .....	36
—cross .....	57
—redirect .....	71
—recross .....	72
Trustee's Report of Exempt Property .....	7







## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MARK F. JONES, JR.,

MAURICE GORDON,

756 So. Broadway,

Los Angeles 14, California.

For Appellee:

C. E. H. McDONNELL,

Suite 925, 548 So. Spring Street,

Los Angeles 13, California.



In the United States District Court for the Southern  
District of California, Central Division

In Bankruptcy—No. 75976-HW

In the Matter of

LEWIS F. BLAGG,

Bankrupt.

### DEBTOR'S PETITION

To the Honorable Judges of the above-entitled Court:

The Petition of Lewis F. Blagg, Residing at No. 11042 West Hondo Parkway, in the Temple City, County of Los Angeles, State of California, by occupation a general contractor, and engaged in the business of general contracting respectfully represents:

1. Your petitioner has had his principal place of business (has resided, or has had his domicile) at 11042 West Hondo Parkway, Temple City, California, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far

as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

/s/ LOUIS F. BLAGG,  
Signature of Petitioner.

State of California,  
County of Los Angeles—ss.

I, Lewis F. Blagg, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

/s/ LOUIS F. BLAGG,  
Signature of Petitioner.

Subscribed and sworn to before me December 19,  
1956.

[Seal] /s/ MAURICE GORDON,  
Notary Public in and for Said  
County and State.

Summary of Debts and Assets

(From the Statements of the Debtor in Schedules A and B)

Schedule A 1—a	Wages .....	\$ 178.80
Schedule A 1—b (1)	Taxes due United States .....	1,717.54
Schedule A 1—b (2)	Taxes due States .....	81.31
Schedule A 1—b (3)	Taxes due counties, districts and municipalities .....	561.60
Schedule A 1—c (1)	Debts due any person, including the United States, having priority by laws of the United States .....	—
Schedule A 1—c (2)	Rent having priority .....	—
Schedule A 2	Secured claims .....	—
Schedule A 3	Unsecured claims .....	12,448.32
Schedule A 4	Notes and bills which ought to be paid by other parties thereto .....	—
Schedule A 5	Accommodation paper .....	—

Schedule A, total ..... \$14,987.57

Schedule B 1	Real estate .....	\$15,414.29
Schedule B 2—a	Cash on hand .....	—
Schedule B 2—b	Negotiable and non-negotiable instruments and securities .....	—
Schedule B 2—d	Household goods .....	2,000.00
Schedule B 2—e	Books, prints and pictures .....	100.00
Schedule B 2—f	Horses, cows and other animals .....	—
Schedule B 2—g	Automobiles and other vehicles .....	950.00
Schedule B 2—h	Farming stock and implements .....	—
Schedule B 2—i	Shipping and shares in vessels .....	—
Schedule B 2—j	Machinery, fixtures and tools .....	500.00
Schedule B 2—k	Patents, copyrights, trade-marks .....	—
Schedule B 2—l	Other personal property .....	250.00
Schedule B 3—a	Debts due on open accounts .....	—
Schedule B 3—b	Policies of insurance .....	2,500.00
Schedule B 3—c	Unliquidated claims .....	—
Schedule B 3—d	Deposits of money in banks and elsewhere .....	—
Schedule B 4	Property in reversion, remainder, expectancy or trust .....	—
Schedule B 5	Property claimed as exempt (included above) ..... \$17,900.00	22,314.29
Schedule B 6	Books, deeds and papers .....	50.00

Schedule B, total ..... \$22,364.29

/s/ LOUIS F. BLAGG,

Signature of Petitioner.

[Endorsed]: Filed December 21, 1956, U.S.D.C.

[Title of District Court and Cause.]

## ORDERS OF ADJUDICATION AND OF GENERAL REFERENCE

At Los Angeles, in said District, on December 21, 1956.

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposition thereto;

It is adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings hereinafter mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number: 75976-HW

Title of Proceedings: Lewis F. Blagg.

Filed: December 21, 1956.

Referee: Joseph J. Rifkind, Esq., Los Angeles, California.

.....

United States District Judge.

[Title of District Court and Cause.]

TRUSTEE'S REPORT OF  
EXEMPT PROPERTY

To: Honorable Joseph J. Rifkind,  
Referee in Bankruptcy:

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the Act of Congress relating to bankruptcy, as his exemptions allowed by law and claimed by him in his schedules filed in the above-entitled proceeding.

Property claimed to be exempt by the laws of the United States with reference to the statute creating the exemption .....

Property claimed to be exempt by State laws, with reference to the statute creating the exemption.....

General Head	Particular Description	Estimated Value
CCP 690.2	Necessary household goods and furniture and wearing apparel .....	\$2,000.00
CCP 690.1	Miscellaneous books .....	\$ 100.00
CCP 690.24	1948 Willys Pick-up truck.....	\$ 150.00

Trustee refuses to exempt and set aside the following items claimed as exempt in the within proceedings:

General Head	Particular Description	Estimated Value
CCP .4	Various tools used in bankrupt's business .....	\$1,117.50
CCP .1	Office furniture .....	\$ 385.00
CCC 1260-1261	Homestead on 11042 West Hondo Parkway, Temple City, described as follows: All of Lot 61 and the southwesterly 10 ft. of Lot 62, Tract 11584, as recorded in Book 213/2 and 3 of Maps, in the office of the County Recorder	(Approx.)



of Los Angeles County, California, said property formerly being registered land entered on a memorial certificate M. H. 2129.

Dated this 8th day of April, 1957.

/s/ IRVING I. BASS,  
Trustee.

[Endorsed]: Filed April 10, 1957, Referee.

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[Title of District Court and Cause.]

### OBJECTIONS

To the Honorable Joseph J. Rifkind, Referee in  
Bankruptcy:

Comes now Lewis F. Blagg, the above-named bankrupt, by his attorneys, Mark F. Jones, Jr. and Maurice Gordon, and objects to the report of the Trustee herein, filed the 10th day of April, 1957, and served on the bankrupt on the 18th day of April, 1957, setting apart exemptions of the said bankrupt, upon the following grounds and for the following reasons:

#### I.

##### Tools and Equipment

The Trustee's refusal to exempt and set apart the items, numbered 16 through 37 set forth on the Inventory on file herein, or any of them, is contrary to and in violation of the provisions of Section 690.4 of the Code of Civil Procedure of the State of California.



II.

Office Furniture and Equipment

The Trustee's refusal to exempt and set apart the items numbered 1 through 15a set forth on the Inventory on file herein, or any of them, is contrary to and in violation of the provisions of Section 690-1 of the Code of Civil Procedure of the State of California.

III.

Homestead

The Trustee's refusal to exempt and set aside to the bankrupt a homestead on the real property located at 11042 West Hondo Parkway, Temple City, California, as more particularly described on Trustee's Report of Exempt Property on file herein, is contrary to and in violation of the provisions of Sections 1260-1261 of the Civil Code of the State of California.

Wherefore, your Objector prays that said Report be not approved.

MARK F. JONES, JR., and  
MAURICE GORDON,

By /s/ MAURICE GORDON.

[Endorsed]: Filed April 22, 1957, Referee.

[Title of District Court and Cause.]

MEMORANDUM OPINION RE OBJECTIONS  
TO TRUSTEE'S REPORT OF EXEMPT  
PROPERTY

Statement of Case

The bankrupt filed his voluntary petition on December 21, 1956, and was adjudicated a bankrupt on that date. Irving I. Bass ever since January 17, 1957, has been and now is the duly appointed, qualified and acting trustee in bankruptcy of the bankrupt estate. The bankrupt in the Debtor's Petition designates himself as a "general contractor." Debts are scheduled as wages \$178.80, taxes due to the United States \$1,717.54, taxes due to the State \$81.31, taxes due to the County, etc. \$561.60, and thirty (30) unsecured creditors of \$12,987.57, or a total of \$14,987.57. Substantially, all of the debts scheduled were contracted by and arise out of the bankrupt's operation as such "general contractor." The assets over and above that claimed as exempt by the bankrupt are negligible.

The trustees filed his report of exempt property on April 10, 1957, in which he refuses "to exempt and set aside (certain) items claimed as exempt" by the bankrupt. These items are: (1) various machinery and equipment used in bankrupt's business as such general contractor, (2) office furniture also used by the bankrupt in such business, and (3) the homestead claimed by the bankrupt as head of a family. The bankrupt filed objections to the trustee's

report of exempt property on April 22, 1957. Counsel for the bankrupt and counsel for the trustee have both ably and thoroughly prepared and presented their respective cases.

\* \* \*

### Resume of Facts Relating to Claim of Homestead and Head of Family

The bankrupt's claim to a homestead as head of a family is set forth in Schedule B-5 as follows:

"Homestead on home at 11042 West Hondo Parkway, Temple City; Petitioner's 11-year-old daughter resides with petitioner during the summer months school vacations and petitioner therefore believes he is entitled to the exemption provided by Sections 1260-1261 of the California Civil Code, to wit; \$12,500.00."

The bankrupt's former wife obtained a divorce from the bankrupt in the State of Nevada on May 12, 1955. The findings of fact recite "that the defendant was personally and duly served with process and has not appeared or answered the complaint and that his default has been entered." The decree after granting plaintiff an absolute decree of divorce provides "That the plaintiff herein be, and she hereby is granted the care, custody and control of the minor child, to wit: Roberta Blagg, with the right of reasonable visitation granted to the defendant; that defendant pay to the plaintiff \$20.00 per week for the support, maintenance and education of said minor child." (Bankrupt's Exhibit No. 1.)

A Declaration of Homestead was executed, verified, acknowledged, and recorded by the bankrupt on December 18, 1956, at 9:50 a.m. (Trustee's Ex-

hibit "A".) This declaration recites "Be it known that I, Lewis F. Blagg, a single man, hereby declare that I am at the time of the making of this Declaration actually residing on the premises hereinafter described and claim them as a homestead." This declaration, it will be noted, makes no reference to being the head of a family whatsoever or to Roberta or that he has a minor child residing with him upon the premises who is under his care and maintenance. The bankrupt on the following day executed a Declaration of Abandonment of Homestead which was recorded on December 19, 1956, at 3:36 p.m. (Trustee's Exhibit "B".)

The bankrupt then executed a Declaration of Homestead which was recorded on December 19, 1956, at 3:49 p.m. (Bankrupt's Exhibit 2.) This last declaration recites: "Be it known that I, Lewis F. Blagg, do hereby declare that I am the head of a family, but that I am not married, and that my family consists of myself, and a minor daughter;" the declaration in the second paragraph states "That I am at the time of making this declaration, residing on the premises." It will be noted that the declaration does not state that we or that my minor daughter and I are residing upon the premises at the time of making this declaration. The debtor's petition was verified on December 19, 1956, and filed on December 21, 1956, at 3:30 p.m.

The evidence shows that Roberta first went to live with her maternal grandmother, Mrs. Clara Simms, in the late Spring of 1955, which was shortly before the granting of the divorce on May 12, 1955. Roberta

attended school between the late Spring of 1955 and February 1956 partly in Temple City (Los Angeles County) and partly at Turlock, California, where her maternal grandmother resided. Roberta, however, lived with her grandmother and attended school at Turlock continuously from February 1956 to the end of the semester in June 1956. Roberta apparently spent part of her summer vacation with her father at Temple City. Roberta resumed school at Turlock in September 1956 and has continuously attended school there to date, continuing to live there with her said grandmother.

It is significant that Roberta visits her mother who lives at Kermin, on week ends, a distance of about 125 miles, but that she has never visited her father from September 1956 to date, nor has the bankrupt visited his minor daughter since at least September 1956. In fact, the bankrupt and his minor daughter have not seen each other since at least September 1956, if not longer. The father has contributed very little if anything to the care, maintenance or support of his minor daughter since at least September, 1956.

The building which the bankrupt claims is affixed to the land and which the trustee claims is removable and therefore personal property, is a steel frame structure, 100 feet in length and 30 feet in width. This structure rests upon a concrete slab and is attached by anchor bolts to the vertical "H" beams which support the roof or super structure. This building clearly appears to be a fixture under Section 660 of the Civil Code, however, such determination is unnecessary to the disposition of the objections.



The Validity of the Claim of the Bankrupt to a  
Homestead as Head of a Family

Section 1261 of the Civil Code of the State of California defines the head of a family as follows:

“(2). Every person who has residing on the premises with him or her, and under his or her care and maintenance \* \* \*

(a). His or her minor child, \* \* \*.”

The bankrupt has never by proceedings in the State of Nevada or by proceedings in the State of California contested, appealed from or in any manner attacked the validity of said decree or the provision therein awarding the custody of the minor child to bankrupt's wife. It is the status of this minor child which forms the basis for the bankrupt's claim to a homestead as the head of a family.

The bankrupt now contends that since the said minor child was not in the State of Nevada when the decree was entered that judgment was and is null and void so far as it attempts and purports to award the plaintiff custody. There is serious doubt as to the bankrupt's right to collaterally attack the decree of divorce rendered in the State of Nevada under Section 1 of Article IV of the Constitution of the United States which provides that “Full faith and credit shall be given in each state to the \* \* \* judicial proceedings of every other State.”

The Court based upon its independent research

has found the case of *Master Lubricants Co. vs. Cook* (9 Cir.) 159 F (2) 679, which is closely analogous to the instant case, in which the court states as follows:

“\* \* \* A default divorce was granted the wife. The wife was awarded custody of a minor daughter, together with an allowance for her support \* \* \* The appellee argues that because there was a minor child, and such child was residing on the premises with her father at the time of, and subsequent to, the final decree of divorce and at the time the petition in bankruptcy was filed, the family relationship necessary for the preservation of the homestead rights continued to be effective.

“(2). Since the custody of the child with support allowance had been granted to the mother, the father, as head of a family owed no further obligation to the child. The daughter was not under the legal custody of the father and was not on the premises with her father under any legal right to insist that she stay there, hence there was no basis for maintaining the homestead, and it was therefore terminated.”

Assuming without conceding, that the Nevada Court lacked jurisdiction to award custody to the mother, it is difficult to conceive of a situation under which a person would be less entitled to claim a homestead as the head of a family than under the facts in the instant case.

### Conclusion and Decision

The Court concludes as follows:

1. That the Declaration of Homestead, of the

bankrupt as the head of a family, recorded on December 19, 1956, in Book 53168, Page 389 of Official Records of the County of Los Angeles, State of California, is null, void and of no force or effect.

2. That the bankrupt is not entitled to have set aside to him as exempt the office equipment and the machinery and equipment used by him as a general contractor, being more particularly Items 1 to 15a, inclusive, and Items 16 to 37, inclusive, of the inventory on file herein.

3. That the objections of the bankrupt to the Trustee's Report of Exempt Property be and they are overruled.

4. The attorney for the trustee will prepare, serve, and submit Findings of Fact, Conclusions of Law and Order, in conformity with the opinion and decision herein, as approved by Rule 7 of the District Court.

Dated: July 17, 1957.

/s/ JOSEPH J. RIFKIND,  
Referee in Bankruptcy.

[Endorsed]: Filed July 17, 1957, Referee.

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[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF  
LAW RE OBJECTIONS TO TRUSTEE'S  
REPORT OF EXEMPT PROPERTY

This matter having come on for hearing on the objections of Lewis F. Blagg, bankrupt, to the report



of exempt property of Irving I. Bass, Trustee in the above-captioned bankruptcy proceedings, on May 8, 1957, at the hour of 2:00 p.m. thereof; and the objector having appeared and been represented by his counsel, Mark F. Jones & Maurice Gordon, by Maurice Gordon, and the trustee having appeared by and been represented through his attorney, C. E. H. McDonnell; and evidence both oral and documentary having been offered and received; and the Referee having been fully advised in the premises now makes his Findings of Fact and Conclusions of Law based thereon.

### Findings of Fact

#### I.

The bankruptcy proceedings of Lewis F. Blagg were commenced by the filing of a voluntary petition in bankruptcy on December 21, 1956. On January 17, 1957, a first meeting of creditors was held in the said proceedings. Irving I. Bass was elected trustee at the first meeting of creditors, immediately qualified, and ever since has been the duly appointed, qualified and acting trustee in these bankruptcy proceedings.

#### II.

On April 10, 1957, the trustee filed his "Report of Exempt Property" in which he refused to exempt or set aside various machinery, equipment and tools used in the bankrupt's business, office furniture and a homestead on real property commonly known and designated as 11042 West Hondo Parkway, Temple

City, California, and more particularly described as follows:

All of Lot 61 and the southwesterly 10 ft. of Lot 62, Tract 11584, as recorded in Book 213/2 and 3 of Maps, in the office of the County Recorder of Los Angeles County, California, said property formerly being registered land entered on a memorial certificate M. H. 2129.

### III.

On April 22, 1957, the bankrupt filed his "Objections" to the trustee's report of exempt property claiming the tools and equipment to be exempt under the provisions of CCP 690.4 and Bankruptcy Act Section 6 (11 U.S.C. Sec. 24), the office furniture and equipment to be exempt under CCP 690.1 and Bankruptcy Act Section 6 (11 U.S.D. Sec. 24), and the homestead to be exempt to the extent of \$12,500.00 under CCC 1260-1261 (incl.) and Bankruptcy Act Section 6 (11 U.S.C. Sec. 24).

### IV.

The bankrupt was at all times from 1946, to December 21, 1956, engaged in business as a steel fabricating contractor, employing numerous employees therein for the accomplishment of prefabricating, assembling and erecting steel structures on contracts obtained by the bankrupt through competitive bidding.

### V.

The tools, machinery and equipment claimed exempt by the bankrupt were used by those employed

by the bankrupt in connection with the business of the bankrupt as a steel fabricating contractor and were of a reasonable value of \$1,117.50.

## VI.

The furniture and equipment claimed by the bankrupt as exempt under CCP 690.1 consisted of tables, chairs, a desk, filing cabinets and miscellaneous equipment used in and for the conduct of the business of the bankrupt as a steel fabricating contractor; none of this furniture and equipment was used in, or is necessary for, the home or household of the bankrupt.

## VII.

From at least September, 1956, to and including May 8, 1957, the date of the hearing herein, Roberta Blagg, the minor daughter of the bankrupt herein, has not resided with her father, Lewis F. Blagg, upon the premises claimed as homeland as the head of a family located at 11042 West Hondo Parkway, Temple City, California, but, on the contrary, the care, custody and control of said minor child has by judicial decree been awarded to her mother and she has during all of such period resided with her maternal grandmother and the bankrupt has not supported or maintained said minor child during said period.

## Conclusions of Law

### I.

The items of office furniture and equipment are not exempt under the provisions of CCP 690.1.

## II.

The bankrupt was not on January 21, 1957, a mechanic or artisan and is not entitled to claim the various items of machinery, equipment and tools exempt under the provisions of CCP 690.4.

## III.

On December 19, 1956, the bankrupt was not head of a family and the homestead on the property located at 11042 West Hondo Parkway, Temple City, California, is null, void and of no force or effect.

## IV.

The homestead filed by the bankrupt on December 19, 1956, was null and void and of no effect as to this bankrupt estate or the trustee in bankruptcy thereof.

Dated: August 12, 1957.

/s/ JOSEPH J. RIFKIND,  
Referee in Bankruptcy.

Affidavit of Service by Mail attached.

Received August 2, 1957.

[Endorsed]: Filed August 12, 1957, Referee.

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[Title of District Court and Cause.]

ORDER ON OBJECTIONS TO TRUSTEE'S  
REPORT OF EXEMPT PROPERTY

This matter having come on for hearing on the objections of Lewis F. Blagg, bankrupt, to the re-

port of exempt property of Irving I. Bass, trustee in bankruptcy, on May 8, 1957, at the hour of 2:00 p.m. thereof; and the objector having appeared and been represented by his counsel, Mark F. Jones & Maurice Gordon, by Maurice Gordon, and the trustee having appeared by and been represented through his attorney, C. E. H. McDonnell; and the court having entered its findings of fact and conclusions of law on the issues presented in this matter; and the Referee being otherwise fully advised in the premises,

Now, Therefore, It Is Ordered as follows:

1. That the report of the trustee of exempt property be and the same hereby is allowed and confirmed.

2. The objections of Lewis F. Blagg to the trustee's report of exempt property be and the same hereby are overruled.

3. That certain homestead filed herein by the bankrupt on December 19, 1956, being document number 2862, in Book 53155, page 127, official records of the County Recorder, Los Angeles County, California, on real property commonly known and designated as 11042 West Hondo Parkway, Temple City, California, and more particularly described as follows:

All of Lot 61 and the southwesterly 10 ft. of Lot 62, Tract 11584, as recorded in Book 213/2 and 3 of Maps, in the office of the County Recorder of Los Angeles County, California, said property formerly being registered land entered on a memorial certificate M. H. 2129.

is null, void and of no force or effect and the bankrupt has no right, title or interest therein or claim thereon by reason of the said destination of homestead or otherwise or at all and said real property and all of the infringements thereon constitutes an asset of the bankrupt estate herein.

\* \* \*

Dated: August 12, 1957.

/s/ JOSEPH J. RIFKIND,  
Referee in Bankruptcy.

[Endorsed]: Filed August 12, 1957, Referee.

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[Title of District Court and Cause.]

### PETITION FOR REVIEW

To Honorable Joseph J. Rifkind, Referee in Bankruptcy:

The Petition of Lewis F. Blagg respectfully represents:

1. Your petitioner is the bankrupt in the above-entitled matter.

2. On August 12, 1957, your Honor entered an Order herein, wherein the Report of the Trustee of Exempt Property was allowed and confirmed, in which Report the Trustee refused to exempt and set aside a homestead claimed as exempt by the Petitioner and in which Petitioner's objections to said report were overruled and the homestead filed by



petitioner on December 19, 1956, covering the real property, more particularly described as:

All of Lot 61 and the southwesterly 10 ft. of Lot 62, Tract 11584, as recorded in Book 213/2 and 3 of Maps, in the office of the County Recorder of Los Angeles County, California, said property formerly being registered land entered on a memorial certificate M. H. 2129, was declared to be null, void and of no force or effect, and that petitioner has no right, title or interest therein or claim thereon by reason of the said Declaration of Homestead or otherwise or at all, and said real property and all of the improvements thereon constitute an asset of the bankrupt estate; said Order being based upon a Finding that petitioner's minor daughter had not resided upon the premises claimed as a homestead by the petitioner as the head of a family, since September of 1956 to and including May 8, 1957, and that the care, custody and control of said minor child had by judicial decree been awarded to the mother (Finding No. VII), and the Conclusion of Law that petitioner was not the head of a family and that the Homestead on the property involved is null, void and of no force or effect (Conclusion No. III).

3. That said Order, Finding and Conclusion of Law with respect to the homestead are erroneous in this,

a. That the Finding that Petitioner's minor daughter, Roberta, was not residing with petitioner at his home on the premises above described and that said minor was not under his care and mainte-

nance is not supported by and is contrary to the evidence;

b. That the Conclusion of Law that petitioner on December 19, 1956, was not the head of a family is contrary to the Rule of Law which holds that the father of a minor child is the head of a family and is entitled to a homestead as such head of a family even though the minor child is not physically residing upon the premises at the time of the filing of the homestead.

Wherefore, your petitioner prays that your Honor certify to the Judge of this Court, and transmit to the Clerk the records in said proceedings, having to do with, or in any manner bearing upon, the Order aforesaid, as provided in Section 39 of the Bankruptcy Act.

/s/ LEWIS F. BLAGG,  
Petitioner.

MARK F. JONES, JR., and  
MAURICE GORDON,  
By /s/ MAURICE GORDON,  
Attorneys for Petitioner.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 16, 1957, Referee.

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[Title of District Court and Cause.]

NOTICE OF FILING CERTIFICATE  
ON REVIEW

To: Mark F. Jones, Jr., and Maurice Gordon, Attorneys for Bankrupt.



C. E. H. McDonnell, Attorney for Trustee in  
Bankruptcy:

Notice is hereby given that the undersigned Referee in Bankruptcy has this date filed with the clerk of the above-entitled court his Certificate on Review of the Order dated August 12, 1957.

Rule 204 (d) of the court provides that the reviewing party, within ten (10) days after the mailing of the notice of the filing of the certificate on review, shall serve upon the respondent and file with the clerk in duplicate a memorandum of points and authorities, and that the respondent shall in like manner, serve and file a reply memorandum of points and authorities within five (5) days thereafter.

Dated: September 6, 1957.

/s/ JOSEPH J. RIFKIND,  
Referee in Bankruptcy.

[Endorsed]: Filed September 6, 1957, Referee.

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[Title of District Court and Cause.]

### CERTIFICATE ON REVIEW

To: Hon. Harry C. Westover, United States District Judge:

The undersigned, Joseph J. Rifkind, Referee in Bankruptcy of the above-entitled court, does hereby certify as follows:

## Statement of Case

The bankrupt filed a Petition for Review on August 16, 1957, from the order of the undersigned Referee in Bankruptcy entered on August 12, 1957, approving the Trustee's Report of Exempt Property. The trustee in said report refused to set aside certain real property to the bankrupt which he claims as a homestead as the head of a family.

## Summary of Evidence

The bankrupt filed his voluntary petition on December 21, 1956, and was adjudicated a bankrupt on that date. Irving I. Bass ever since January 17, 1957, has been and now is the duly appointed, qualified and acting trustee in bankruptcy of the bankrupt estate. The bankrupt in the Debtor's Petition designates himself as a "general contractor." Debts are scheduled as wages \$178.80, taxes due to the United States \$1,717.54, taxes due to the State \$81.31, taxes due to the County, etc., \$561.60, and thirty (30) unsecured creditors of \$12,448.32, or a total of \$14,987.57. Substantially, all of the debts scheduled were contracted by and arise out of the bankrupt's operation as such "general contractor." The assets over and above that claimed as exempt by the bankrupt are negligible.

The trustee filed his report of exempt property on April 10, 1957, in which he refuses "to exempt and set aside (certain) items claimed as exempt" by the bankrupt. These items are: (1) Various machinery and equipment used in bankrupt's business

as such general contractor, (2) office furniture also used by the bankrupt in such business, and (3) the homestead claimed by the bankrupt as head of a family. The bankrupt filed objections to the Trustee's Report of Exempt Property on April 22, 1957. The Referee in Bankruptcy overruled the objections and approved the Trustee's Report of Exempt Property. The Petition for Review is only from that portion of the order which holds that the Declaration of Homestead of the bankrupt as the head of a family is void.

The bankrupt's former wife obtained an absolute and final decree of divorce from the bankrupt in the State of Nevada on May 12, 1955. The findings of fact in the decree recite "that the defendant was personally and duly served with process and has not appeared or answered the complaint and that his default has been entered." The decree after granting plaintiff an absolute decree of divorce provides, "That the plaintiff herein be, and she hereby is granted the care, custody and control of the minor child, to wit: Roberta Blagg, with the right of reasonable visitation granted to the defendant; that defendant pay to the plaintiff \$20.00 per week for the support, maintenance and education of said minor child." (Bankrupt's Exhibit 1.)

A Declaration of Homestead was executed, verified, acknowledged, and recorded by the bankrupt on December 18, 1956, at 9:50 a.m. (Trustee's Exhibit "A.") This declaration recites, "Be it known

that I, Lewis F. Blagg, a single man, hereby declare that I am at the time of the making of this Declaration actually residing on the premises hereinafter described and claim them as a homestead." This declaration makes no reference to the bankrupt being the head of a family or to his minor daughter, Roberta, or that said minor child, Roberta, was residing with him upon the premises or that said minor daughter, Roberta, was under his care and maintenance. The bankrupt on the following day executed a Declaration of Abandonment of Homestead which was recorded on December 19, 1956, at 3:36 p.m. (Trustee's Exhibit "B.")

The bankrupt then executed a Declaration of Homestead which was recorded on December 19, 1956, at 3:49 p.m. (Bankrupt's Exhibit No. 2.) This last declaration recites, "Be it known that I, Lewis F. Blagg, do hereby declare that I am the head of a family, but that I am not married, and that my family consists of myself and a minor daughter"; the declaration in the second paragraph states, "That I am at the time of making this declaration, residing on the premises." The declaration does not state that the bankrupt and minor daughter are residing upon the premises at the time of making the declaration. The debtor's petition was verified on December 19, 1956, and filed on December 21, 1956, at 3:30 p.m.

The evidence shows that Roberta first went to live with her maternal grandmother, Mrs. Clara Sims, in the late Spring of 1955, which was shortly before the granting of the divorce to her mother

on May 12, 1955. Roberta attended school between the late Spring of 1955 and February, 1956, partly in Temple City (Los Angeles County) and partly at Turlock, California, where her maternal grandmother resided. Roberta, however, lived with her grandmother and attended school at Turlock continuously from February, 1956, to the end of the semester in June, 1956. Roberta apparently spent part of her 1956 summer vacation with her father at Temple City. Roberta resumed school at Turlock in September, 1956, and has continuously attended school there to date, continuing to live there with her said maternal grandmother who has supported and maintained her granddaughter, Roberta, while living with her.

Roberta visits her mother who lives at Kermin on week ends, a distance of about 125 miles, but she has not visited her father from September, 1956, to date, nor has the bankrupt visited his minor daughter from at least September, 1956, to the date of the hearing. The bankrupt and his minor daughter have not seen each other since from at least September, 1956, if not longer. The father has contributed very little if anything to the care, maintenance or support of his minor daughter since at least September, 1956.

#### Order of Referee in Bankruptcy

The findings of fact and conclusions of law were signed on August 12, 1956. The order from which the review has been taken was signed on August 12, 1956.



### Questions Presented on Review

The Petition for Review asserts that the findings of fact, conclusions of law and the order are erroneous in the following particulars, to wit:

a. That the Finding that Petitioner's minor daughter, Roberta, was not residing with petitioner at his home on the premises above described and that said minor was not under his care and maintenance is not supported by and is contrary to the evidence;

b. That the Conclusion of Law that petitioner on December 19, 1956, was not the head of a family is contrary to the rule of law which holds that the father of a minor child is the head of a family and is entitled to a homestead as such head of a family even though the minor child is not physically residing upon the premises at the time of the filing of the homestead.

### Documents Transmitted

There are transmitted with this Certificate on Review the following:

1. Debtor's petition with schedule of assets and liabilities attached thereto, filed December 21, 1956.
2. Trustee's Report of Exempt Property filed April 10, 1957.
3. Objections to Report of Exempt Property filed April 22, 1957.
4. Bankrupt's Exhibits 1 and 2.
5. Trustee's Exhibits A and B.
6. Memorandum Opinion filed July 17, 1957.
7. Findings of Fact and Conclusions of Law

filed August 12, 1957.

8. Order dated August 12, 1957.

9. Petition for Review filed August 16, 1957.

10. Transcript of hearing on May 8, 1957.

11. Notice of Filing Certificate on Review dated September 6, 1957.

Dated: September 6, 1957.

Respectfully transmitted,

/s/ JOSEPH J. RIFKIND,

Referee in Bankruptcy.

[Endorsed]: Filed September 6, 1957, U.S.D.C.

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[Title of District Court and Cause.]

## ORDER SUSTAINING REFEREE ON REVIEW

This matter having come on for hearing on the verified petition for review of Lewis F. Blagg to review the order of the Honorable Joseph J. Rifkind, Referee in the above-captioned bankruptcy, of August 12, 1957, allowing the trustee's report of exempt property on the 16th day of December, 1957, at the hour of 3:00 p.m. thereof; and the petitioner, Lewis F. Blagg, having appeared by and was represented through his counsel, Mark F. Jones, Jr., and Maurice Gordon, by Mark F. Jones, Jr., and the respondent, Irving I. Bass, trustee in the above-captioned bankruptcy, having appeared by and was represented through his counsel, C. E. H. McDonnell; and it appearing that memorandums of points and authorities having been filed herein and argu-

ment having been made; and the court being otherwise fully advised in the premises,

Now, Therefore, It Is Ordered that the petition for review of Lewis F. Blagg be and the same hereby is denied, and the order of the Referee allowing the trustee's report of exempt property be and the same hereby is confirmed; and

It Is Further Ordered that the findings of fact, conclusions of law on which the said order of the Referee was founded be and the same hereby are adopted.

Dated: 1/14/58.

/s/ HARRY C. WESTOVER,  
U. S. District Court Judge.

Approved as to Form:

MARK F. JONES, JR., and  
MAURICE GORDON,  
By /s/ MAURICE GORDON,  
Attorneys for Petitioner.

/s/ C. E. H. McDONNELL,  
Attorney for Trustee.

[Endorsed]: Filed and entered January 14, 1958.



[Title of District Court and Cause.]

NOTICE OF ENTRY

MARK F. JONES, JR., and  
MAURICE GORDON, ESQS.,  
756 South Broadway,  
Los Angeles 14, Calif.

C. E. H. McDONNELL, ESQ.,  
548 South Spring St.,  
Los Angeles 13, Calif.

Re: Lewis F. Blagg, Bankrupt, No. 75976-HW.

You are hereby notified that order sustaining Referee on review in the above-entitled case has been entered this day in the docket.

Dated: January 14, 1958.

CLERK, U. S. DISTRICT  
COURT,

By C. A. SIMMONS,  
Deputy Clerk.

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[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Lewis F. Blagg, the above-named Bankrupt, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the Order of the District Court for the Southern District of California, Central Division, sustaining and confirming that portion of

the Order of the Honorable Joseph J. Rifkind, Referee in Bankruptcy, approving the Trustee's Report of Exempt Property pertaining to the claim of exemption of a homestead by the above-named bankrupt.

Dated: February 11, 1958.

MARK F. JONES, JR., and  
MAURICE GORDON,

By /s/ MAURICE GORDON,  
Attorneys for the Bankrupt-  
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 11, 1958.

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[Title of District Court and Cause.]

POINTS TO BE RELIED UPON  
ON APPEAL

To: The Clerk of the Above-Entitled Court, and  
to Irving I. Bass, Trustee in Bankruptcy, and  
to Christopher E. H. McDonnell, His Attorney:

\* \* \*

The Points upon which the Appellant intends to  
rely on Appeal are:

1. That the District Court erred in sustaining  
and confirming the Order of the Referee, whereby  
the homestead recorded by the appellant was held  
to be null and void and of no force or effect, and

that the bankrupt has no right, title or interest in the home covered by the homestead;

2. That the Findings, Conclusions of Law and the Order of the Referee are and were erroneous in that the Finding that Appellant's minor daughter was not residing with appellant on the premises covered by the homestead and that said minor child was not under his care and maintenance, is not supported by and is contrary to the evidence;

3. That the Referee's Conclusion of Law that appellant on December 19, 1956, was not the head of a family, is contrary to law.

Dated: February 11, 1958.

MARK F. JONES, JR., and  
MAURICE GORDON,  
By /s/ MAURICE GORDON,  
Attorneys for Bankrupt-  
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 11, 1958, U.S.D.C.

In the District Court of the United States for the  
Southern District of California, Central Division

In Bankruptcy—No. 75976-HW

In the Matter of:

LEWIS F. BLAGG,

Bankrupt.

Before the Honorable Joseph J. Rifkind, Referee  
in Bankruptcy.

### TRANSCRIPT OF PROCEEDINGS

Hearing on Bankrupt vs. Trustee Re: Objections  
to Trustee's Report of Exempt Property,  
Wednesday, May 8, 1957, at 2:00 O'clock p.m.

Appearances:

For the Trustee:

C. E. H. McDONNELL.

For the Bankrupt:

MAURICE GORDON and

MARK F. JONES, By

MAURICE GORDON, ESQ.

\* \* \*

LEWIS F. BLAGG

called as a witness in his own behalf, being first  
duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gordon:

Q. Mr. Blagg, you are the bankrupt in these [4\*]  
proceedings? A. Yes, sir.

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\*Page numbering appearing at top of page of original Reporter's  
Transcript of Record.

(Testimony of Lewis F. Blagg.)

Q. I am going to direct some questions to you in connection with your home. You live at 11042 West Hondo Parkway, Temple City. Is that correct? A. Yes.

Q. Does that property stand in your name?

A. Yes.

Q. How long have you lived there, Mr. Blagg?

A. Approximately 17 years.

Q. Are you presently married?

A. No, sir.

Q. When were you divorced, if you were divorced? A. Somewhere in 1955.

Q. What was your wife's name?

A. Isabelle.

Q. Where did that divorce take place?

The Referee: Pardon me, how long ago was that divorce?

The Witness: 1955.

Q. (By Mr. Gordon): Where did the divorce proceedings take place, Mr. Blagg?

A. I believe it was Reno, Nevada.

Q. Do you know that it was in the State of Nevada?

A. Yes, sir, because I got the certificate from them. [5]

Q. Who obtained the divorce, you or Mrs. Blagg? A. Mrs. Blagg.

Mr. Gordon: For the purpose of the record would you stipulate the divorce was obtained in the State of Nevada in proceeding No. 20,136, entitled Isabelle T. Blagg vs. Lewis F. Blagg, and that the

(Testimony of Lewis F. Blagg.)

decree of divorce was rendered on May 12, 1955? I have a certified copy of that.

Mr. McDonnell: I think it would be easier if we put the decree into evidence.

Mr. Gordon: Very well. We offer the decree of divorce that I have just recited into evidence as Objector's No. 1.

The Referee: Very well, the document will be received in evidence as Bankrupt's Exhibit No. 1.

### BANKRUPT'S EXHIBIT No. 1

In the First Judicial District Court of the State  
of Nevada, in and for the County of Ormsby

No. 20,136

ISABEL T. BLAGG,

Plaintiff,

vs.

LEWIS F. BLAGG,

Defendant.

RICHARD L. WATERS, JR.,

Attorney for Plaintiff.

### FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

This Cause coming on regularly to be heard this day before the Court, without a jury, plaintiff being personally present in Court and represented by her attorney, Richard L. Waters, Jr., Esq., and it appearing that defendant was personally and

(Testimony of Lewis F. Blagg.)

duly served with process and has not appeared or answered the complaint and that his default has been entered, witnesses having been sworn, testimony given, and the Court having considered the same upon submission of the cause, does now find and conclude:

### Findings of Fact

That all of the allegations of plaintiff's complaint are true.

### Conclusions of law

From the foregoing the Court concludes that plaintiff is entitled to the relief prayed for in her complaint.

It Is Therefore Ordered, Adjudged and Decreed

1. That plaintiff be and she hereby is granted an absolute decree of divorce forever dissolving the bonds of matrimony now and heretofore existing between plaintiff and defendant and restoring each of the said parties to the status of a single person.

2. That the plaintiff herein be, and she hereby is granted the care, custody and control of the minor child, to wit: Roberta Blagg, with the right of reasonable visitation granted to the defendant; that defendant pay to the plaintiff \$20.00 per week for the support, maintenance and education of said minor child.

3. That the use of the former name of the plaintiff, to wit: Isabel T. Travers, be, and the same hereby is restored to her.



(Testimony of Lewis F. Blagg.)

Done in open court this 12th day of May, 1955.

/s/ JOHN F. SEXTON,  
District Judge.

State of Nevada,  
County of Ormsby—ss.

I, Geraldine Lamb, County Clerk of Ormsby County, State of Nevada, and ex officio Clerk of the District Court, in and for the County of Ormsby, do hereby certify that the foregoing is a full, true and correct copy of the original Findings of Fact, Conclusions of Law, Judgment and Decree in the action No. 20,136 entitled: Isabel T. Blagg, Plaintiff, vs. Lewis F. Blagg, Defendant, which now remains on file and of record in my office in said Carson City, in said County.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Carson City, in said County and State, this, 12th day of May, A.D. 1955.

[Seal]      /s/ GERALDINE LAMB,  
Clerk.

[Endorsed]: Filed May 12, 1955.

[Endorsed]: Filed May 8, 1957, Referee.

Q. (By Mr. Gordon): Mr. Blagg, were you present in the State of Nevada at the time the divorce matter came up for hearing?      A. No.

Q. Were any of your children physically pres-

(Testimony of Lewis F. Blagg.)

ent in the State of Nevada at the time the divorce decree was rendered?      A. No, sir.

Q. With particular reference to Roberta, was she present in the State of Nevada at that time?

A. No. [6]

Q. Had she ever been in the State of Nevada, as far as you know, in the year of 1955?

A. No, sir.

Q. How old is Roberta?      A. 12.

Q. Is she presently 12?      A. Yes, about.

Q. Were you represented by counsel in the State of Nevada in these divorce proceedings in May of 1955?      A. I was represented by counsel here.

Q. Did counsel in Nevada represent you at the divorce proceedings?

A. Not that I know of; no, sir.

Q. Mr. Blagg, you have other children, do you not?      A. Yes.

Q. Besides Roberta?      A. Two.

Q. (By the Referee): What are their names and ages?

A. Ann Blagg or Ann Bowman now.

Q. How old is she?      A. 18.

Q. How long has she been married?

A. Since somewhere in Septemer, as far as I can recollect.

Q. Of last year?      A. Yes, sir. [7]

The Referee: You might proceed.

Q. (By Mr. Gordon): And the name of the other child?      A. Frances Louise.

Q. What is her last name?      A. Vincent.

(Testimony of Lewis F. Blagg.)

Q. (By the Referee): How old is she?

A. 23.

Q. How long since she has been married?

A. She was married somewhere around June of 1955.

The Referee: Thank you. You may proceed.

Q. (By Mr. Gordon): Mr. Blagg, at the time you filed your homestead, which I believe was on December 19, 1956—pardon me, do you have that homestead, Mr. McDonnell?

Mr. McDonnell: Yes.

Mr. Gordon: Do you mind if we put that into evidence?

Mr. McDonnell: I will stipulate it may go in.

Mr. Gordon: May the document entitled, "Declaration of Homestead" be put into evidence as Bankrupt's next in order?

The Referee: It will be received in evidence as Bankrupt's Exhibit No. 2.

## BANKRUPT'S EXHIBIT No. 2

### Declaration of Homestead

Be It Known That I, Lewis F. Blagg, do hereby declare that I am the head of a family, but that I am not married, and that my family consists of myself and a minor daughter;

That I am, at the time of making this declaration, residing on the premises hereinafter described, and that I claim said premises as a homestead.

The premises so claimed by me consist of the

(Testimony of Lewis F. Blagg.)

real property situated in Temple City, County of Los Angeles, State of California, and described as follows:

All of Lot 61 and the southwesterly 10 feet of Lot 62, Tract 11584, as recorded in Book 213, Pages 2 and 3 of Maps, in the office of the county recorder of said county and state, said property formerly being registered land entered on a memorial certificate M.H. 2129.

The improvements on said real property consist of a 10 room residence and a converted garage, plus a structural steel building 30 feet by 80 feet in area and a steel frame building 25 feet by 50 feet in area. That I estimate the cash value of said land and premises to be the sum of \$30,000.00.

That a prior Declaration of Homestead has been heretofore abandoned by me, by a Declaration of Abandonment.

In Witness Whereof, I hereunto set my hand this 19th day of December, 1956.

/s/ LEWIS F. BLAGG.

State of California,  
County of Los Angeles—ss.

Lewis F. Blagg, being first duly sworn, deposes and says: That he has read the foregoing Declaration of Homestead and that all of the facts therein stated are true.

/s/ LEWIS F. BLAGG.

(Testimony of Lewis F. Blagg.)

Subscribed and sworn to before me this 19th day of December, 1956.

[Seal]      /s/ MAURICE GORDON,  
Notary Public.

State of California,  
County of Los Angeles—ss.

On the 19th day of December, 1956, before me, a notary public in and for said county and state, personally appeared Lewis F. Blagg, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same.

In Witness Whereof, I hereunto set my hand and seal the day and year first above written.

[Seal]      /s/ MAURICE GORDON,  
Notary Public in and for Said  
County and State.

[Endorsed]: Filed May 8, 1957, Referee.

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Q. (By Mr. Gordon): Mr. Blagg, at the time the Declaration of Homestead was filed, namely, December 19, 1956, who was living with you at your residence at 11042 West Hondo Parkway, Temple City? [8]

Mr. McDonnell: To which I will object as calling for a conclusion of the witness. The fact of whether or not anybody was living with him would be a conclusion for the Court to draw from the circumstances.

(Testimony of Lewis F. Blagg.)

The Referee: The objection is sustained.

I think you can bring out what you want to bring out without asking for a direct conclusion of the witness. After all, that is the province of the Court to determine that.

Q. (By Mr. Gordon): Who was residing with you on the premises?

Mr. McDonnell: I will object to that question, too, on the ground that it calls for the conclusion of the witness as to whether or not anybody was residing with him on the premises. The facts of the matter can be brought out——

The Referee: The objection is sustained.

Mr. Gordon: If the Court please, residing is both a question of fact and a question of law. The question, if I understand counsel's objection at all, is who was actually present upon the property.

The Referee: I think you can develop what you want to without asking a question that calls for a conclusion.

Q. (By Mr. Gordon): Mr. Blagg, with respect to any of your children—with respect particularly to Roberta, where was her home in the year 1956, any time [9] in the year 1956?

A. Well, this property has been her home.

Q. Sir?

A. This property has been her home here.

Q. This property on West Hondo Parkway?

A. Yes.

Q. Where was her home on December 19, 1956?

A. Well, it would still be her home.



(Testimony of Lewis F. Blagg.)

Q. She was physically present on the premises on December 19, 1956, was she? A. No, sir.

Q. Was she physically present on the premises, say, from June to September of 1956?

A. Yes, sir.

The Referee: Give me those dates again?

Mr. Gordon: Between June and September, 1956.

Q. After September, 1956, Mr. Blagg, where was the physical presence of Roberta?

A. At her grandmother's in Turlock.

Q. In what city? A. Turlock.

Q. Turlock, California? A. Yes.

Q. What was she doing there?

A. Going to school.

Q. Was she there by your arrangement or otherwise? [10]

Mr. McDonnell: I will object to that question, your Honor, on the ground that it calls for a hearsay answer.

The Referee: The objection is sustained.

Q. (By Mr. Gordon): Did you send her to Turlock, Mr. Blagg? A. Yes.

Q. For what reason?

A. The school is smaller up there, and we thought that she would get along better and get away from this situation that we had here for awhile.

Q. To what situation are you referring?

A. The divorce proceedings and so forth.



(Testimony of Lewis F. Blagg.)

The Referee: What daughter are we talking about now?

Mr. Gordon: Roberta, the 12-year-old daughter.

Q. Was Mrs. Blagg then residing on the premises in December of 1956? A. No, sir.

Q. How long prior to that date had she left the premises?

A. Approximately Christmas time of 1954.

Q. Had you and Mrs. Blagg then in effect separated, Mr. Blagg? A. Yes.

Q. Where was Mrs. Blagg from December of 1954, on? A. I don't know. [11]

Q. Were you in communication with her?

A. Partially, by some gasoline bills.

Q. But no direct communication?

A. No, sir.

Q. As a matter of fact, Mrs. Blagg had just left the premises and left you and the children there. Is that correct? A. Yes, that is right.

Q. Which children were there at that time?

A. All three of them.

Q. When did you say your eldest daughter married? A. June something in 1955.

Q. Subsequent to the time Mrs. Blagg——

A. In 1956, pardon me.

Q. What is the name of your eldest daughter?

The Referee: Frances Louise Vincent.

The Witness: She was married in June of 1956.

Q. (By Mr. Gordon): Did she marry shortly before Ann, is that what you mean?

A. Yes.

(Testimony of Lewis F. Blagg.)

Q. That would be the same year, then?

A. Yes.

Q. Then she lived on the premises until she married? A. Yes.

Q. Did she live on the premises beyond that date?

A. Just a few days—a week, something of [12] that sort.

Q. Ann, the second eldest daughter, she lived on the premises, too, at the time Mrs. Blagg left?

A. Yes.

Q. And she continued to live there until when?

A. I don't know. I guess it was after Christmas.

Q. Of what year? A. 1956.

The Referee: Did she continue to live there then for several months after she was married?

The Witness: Yes.

Q. (By Mr. Gordon): When did you learn, Mr. Blagg, that Ann had married?

A. Approximately the time these papers were taken out.

Q. By "these papers," you mean the homestead?

A. Yes.

Q. What were the circumstances of your learning that?

A. Well, I think I gave you to understand she was 17, and I said I would check up on it, so I called the house and found out she was 18, and you said that would change the papers somewhat to make them legal.

Q. You mean change the homestead papers?

(Testimony of Lewis F. Blagg.)

A. Yes.

Q. Can you give us Ann's birth date? [13]

A. I believe it is September 14th.

Q. On September 14, 1956, how old was she?

A. I arrived at it later when I called, but I said she was 17 at that time.

Q. But she was actually what, 18?

A. Yes.

Q. When had she married?

A. A short while previous to that time.

Q. You mean before she reached the age of 18, or after?

A. I never questioned her too closely, but approximately at that time.

Q. And you learned about her marriage, do I understand you to say, between September, her birthday, and the time that this homestead was filed. Is that correct? A. Yes.

Q. Was that at my office that we discussed this matter? A. Yes.

Q. Did I tell you at that time, Mr. Blagg, or did I say anything to you at that time with respect to what effect, what legal effect her marriage would have upon your right to file a homestead as the head of a household?

Mr. McDonnell: Just a moment. Your Honor, I don't think that is a proper method of interrogating counsel's own witness. [14]

The Referee: Your objection is sustained.

Q. (By Mr. Gordon): At that time, Mr. Blagg, on December 19th or thereabouts of 1956, you told

(Testimony of Lewis F. Blagg.)

us that Roberta's home was with you, but she was physically present in Turlock? A. Yes.

Q. Were all of her personal effects in Turlock or were there any in the Temple City address with you?

A. Well, there was quite a bit at the house, but now she is outgrowing them, of course.

Q. For how long has she gone to school in Turlock?

A. That would make two semesters then.

Q. What semesters would they be? Give us the dates?

A. In other words, it would be starting from September into 1956—when does it start and end, in June?

Q. The school year?

The Referee: Ending in June of what year, 1957, is that what you are alluding to?

The Witness: No.

The Referee: You stated she started in September of 1956, going to school in Turlock.

The Witness: Well, she started going to school at the start of the term—when do they start, February, something like that? [15]

Mr. Gordon: No, September.

The Witness: They start in February and go to June and get time off and then go back to school.

Q. (By Mr. Gordon): Between February and June of 1956, where was Roberta? Where was she physically present from February to June of 1956?

A. She was up with her grandmother.

(Testimony of Lewis F. Blagg.)

Q. Was she at her grandmother's before February of 1956, or was that her first semester away from home?

A. That was the first full semester.

Q. So, from February to June of 1956, she was in Turlock? A. Yes.

Q. Prior to February of 1956, where was she making her home?

A. Well, part of the time down here, and then whenever it was we sent her up there—I forget the exact date.

Q. Did she return to your home in June of 1956? A. Yes.

Q. And she remained until when?

A. Labor Day.

Q. Labor Day of 1956? A. Yes.

Q. Then where did she go?

A. Back to Turlock. [16]

Q. So that is the beginning of the fall semester in 1956? A. Yes.

Q. When did she return, if at all, after that?

A. She hasn't been down since.

Q. She is still going to school in Turlock?

A. Yes.

Q. During the time she was in Turlock, specifically from February, 1956, to June, did you support Roberta; pay for her clothes or food and the necessities of a child?

A. Yes; whatever her grandmother thought was sufficient.

Q. In other words, the grandmother would write

(Testimony of Lewis F. Blagg.)

you and ask you for money and you would send some up. Is that correct?      A. Yes.

Q. During the school vacation period from June to September of 1956, did you support Roberta then?      A. Yes.

The Referee: From June to September where was she living physically?

The Witness: Physically she was living here.

Q. (By Mr. Gordon): At the Temple City address? At your home, in other words?

A. Yes.

Q. Did she come down during any of the interim [17] school vacations: the Easter vacation or the Christmas vacation? I am speaking of the spring of 1956. I am taking from the period of February, 1956, to June, 1956. Did she come down during any vacation in that period?

A. I don't believe so. If she did, it was only for a week end or something.

Q. What about Easter?

Mr. McDonnell: I think counsel got an answer to that question, and I will object to him leading the witness by suggesting answers.

The Referee: The objection is sustained.

Q. (By Mr. Gordon): Did Roberta come down at all after September of last year to the present time?      A. No, sir.

Q. After she went back after Labor Day of 1956, did you continue to support Roberta?

A. Yes, sir.



(Testimony of Lewis F. Blagg.)

Q. Were any of her clothes and personal effects still with you after September of 1956?

A. Yes, sir.

Q. Were they with you on December, 1956, at the time of the filing of the homestead?

A. Yes.

Q. Did you at any time enter into any agreement, oral or otherwise, with Mrs. Blagg in which you consented to take custody and control of Roberta, that she may be [18] given to Mrs. Blagg?

A. No, sir.

The Referee: Has any agreement of any kind been entered into between you and Mrs. Blagg relating to the custody of the children?

The Witness: No, sir. I have never seen or spoke to her since she left that day.

Q. (By Mr. Gordon): Mr. Blagg, when did you first learn of the contents of the decree of divorce, a copy of which has been introduced here as Bankrupt's Exhibit 1?

A. I can't tell you the exact date, but you said it would be required for the Referee or something, and I had to go up and get the certified copy from Glen Lane.

Q. Who was your local counsel at that time?

A. Yes.

Q. Was it within the last month or two or prior to the filing of the bankruptcy petition?

A. It was within the last month.

Q. Did you prior to that time know that the Nevada Court had awarded control and custody



(Testimony of Lewis F. Blagg.)

of Roberta—I believe it is limited to Roberta, if I am not mistaken?

The Referee: Yes, that is all contained in paragraph II of Bankrupt's Exhibit 1.

Q. (By Mr. Gordon): I will repeat the question. Did you prior to the time you saw this copy of the divorce decree know that the Nevada Court had granted custody and [19] control of Roberta to Mrs. Blagg?

A. No, sir, I didn't know it.

Q. Did you know that Court had also awarded or had also ordered that you pay to Mrs. Blagg the sum of \$20 per week for the support of Roberta?

A. No, sir.

Q. Have you ever paid Mrs. Blagg anything for the support of Roberta?

A. No, sir.

Q. Has Mrs. Blagg ever had any custody or control of Roberta since she left you in 1954 in December?

A. No, but in the last three months or something, yes, sir.

Q. What happened in the last three months?

A. They are living in Kerman, and she gets up there on weekends.

Q. Who is living in Kerman?

A. Isabelle; Mrs. Blagg.

Q. You mean Roberta goes down to see her from her grandmother's house?

A. Yes.

Q. Do you know whether Mrs. Blagg has had custody of Roberta?

Mr. McDonnell: That is really calling for a legal conclusion.

(Testimony of Lewis F. Blagg.)

Mr. Gordon: I will withdraw the question. [20]

Q. At any rate, you know that Roberta is not living with Mrs. Blagg? A. Yes.

The Referee: How far is Kerman from Turlock?

The Witness: About 125 miles is my guess.

Q. (By Mr. Gordon): Mr. Blagg, from December, 1954, at the time Mrs. Blagg left until the present time you have had and have taken the responsibility of supporting Roberta. Is that correct?

Mr. McDonnell: Object to the question as calling for a conclusion of the witness. The witness can tell us what he did; other than that it is a conclusion.

The Referee: I think the proper way is to show what he has done towards her support, rather than ask him if he has undertaken the responsibility of supporting her.

The objection is sustained.

There has been considerable leading of the witness, some of which is probably harmless, but some of the conclusions are the direct problems confronting the Court for determination, which are really legal conclusions.

Mr. Gordon: I don't want to belabor the point. I am going on this basis, the matter of intent is an important question here in connection with his being head of the family.

The Referee: But the Court determines the intent of the party from the acts and facts and conduct; not whether [21] after bankruptcy is filed the

(Testimony of Lewis F. Blagg.)

witness says, it is my intention or not my intention.

Q. (By Mr. Gordon): In resume let me put it this way, Mr. Blagg: from the time Mrs. Blagg left in December of 1954, through June of 1956, with the exception of the period from February, 1956, to June, 1956, both your eldest daughter Frances and your daughter Ann lived with you?

A. Yes, sir.

Q. And Roberta, with the exception of that period from February to June, 1956?

A. Yes.

Q. And you provided the support for all three of them, did you not, during that period of time?

A. Yes, sir.

Q. Including the time that Roberta was in Turlock between February and June of 1956?

A. Yes.

Q. And Roberta would go to Turlock or come back upon your say-so, isn't that correct? You made the determination as to whether Roberta was to go or not to go? A. Yes.

Q. And it was you who determined that Roberta should go to her grandmother's and attend school there. Is that correct, sir? A. Yes.

Q. From June, 1956, until some time into the Christmas [22] season of 1956, you supported Ann also, did you not? A. Yes, sir.

Q. Even though she was already married?

A. Yes, sir.

Q. And you also supported Roberta from June

(Testimony of Lewis F. Blagg.)

of 1956, through the entire year of 1956. Is that correct?

A. Yes, sir.

Q. And also for this much of 1957 that has already elapsed?

A. Yes.

Q. Roberta did not visit her mother on these weekends at Kerman prior to these last three months. Is that correct?

Mr. McDonnell: I will have to object to the question on the ground it is leading and suggestive, and further, it has been asked and answered.

The Referee: The objection is sustained on the ground it has been asked and answered, and on the further ground it is leading and suggestive. This is direct examination and the witness is your witness, Mr. Gordon.

In other words, the witness testified, if my notes are correct, that since Mrs. Blagg has been living in Kerman, Roberta visits her on weekends; she comes down from Turlock, and I asked the witness what the distance was, and he said approximately 125 miles, and that has been occurring during the past three months. [23]

\* \* \*

### Cross-Examination

By Mr. McDonnell:

Q. Mr. Blagg, I want to go back over just one or two items that were covered by your attorney.

Let's first go to the divorce that you and Mrs. Blagg had. Did you know that Mrs. Blagg was going to obtain that divorce before she did?

A. No, not before she did, actually. You see,

(Testimony of Lewis F. Blagg.)

we had no track of her. Actually, we didn't know where she was.

Q. You had an attorney, Mr. Lane. Did he represent you locally in connection with that matter?

A. By locally you mean in Los Angeles?

Q. Yes, in Los Angeles locally? [42]

A. Yes.

Q. Did he represent you before or after the divorce was obtained in 1955 in connection with it?

A. Well, it was just about that time, I would say. In other words, the reason I obtained the attorney was we had some notification or record of her starting to get a divorce.

Q. Didn't you enter into some sort of a property arrangement with her where you agreed to pay her something?

A. Not until after the divorce proceedings.

Q. That was after the divorce proceeding?

A. Yes.

Q. Were you ever served with any paper at any time? A. Not that I can remember.

Q. It wasn't until after the divorce proceeding, then, that you conferred with Mr. Lane?

A. No; it was just before.

Q. Just before?

A. In other words, the divorce was not final yet, and I conferred with Mr. Lane when I found out that she had started proceedings.

Q. In other words, when you knew she had filed a complaint? A. Yes.

Q. How did you find that out?



(Testimony of Lewis F. Blagg.)

A. I believe that a lawyer in Temple City [43] called me and told me that she was starting proceedings.

Q. Did he represent her?

A. He did not, no, sir, because she evidently got someone to represent her or she decided not to have him, I don't know which.

Q. As I understand your testimony, you never saw the divorce decree until fairly recently? That is the document which is Objector's Exhibit No. 1 in evidence, you never saw that?

A. No, sir. I would venture to say it must have been about not over three days before this other proceeding here.

Q. Have you at any time since 1955 instituted a divorce proceeding of this kind against your wife in these courts or in any other place?

A. No, sir.

Q. Let's talk for a moment about your daughter, Roberta. She is the younger daughter. Let me see if I can find out when it was she went north to Turlock. Do you recall that date?

A. It would be around Christmas, something like that, 1956, shortly afterwards.

The Referee: That is when she first went to Turlock?

The Witness: Yes.

Q. (By Mr. McDonnell): She didn't go there until Christmas of last year? [44]

A. She was there last year all year long outside of these three months that she was with me, and she

(Testimony of Lewis F. Blagg.)

was there the semester previous to that. That would be 1955, wouldn't it?

Q. On March 29, 1957, you were here and we examined you and went over some of this terrain before, didn't we? A. Yes.

Q. My notes reflect, which were made that afternoon, that at that time I understood you to say that your daughter had gone to Turlock some time in the late Spring of 1955. Is that right?

A. Somewhere close to that, yes.

Q. In other words, I notice that the divorce decree is dated May 12, 1955. Was it shortly after that? A. Yes.

Q. And she went there and stayed a semester, as it were? A. Yes.

Q. Had she up until that time been attending school in Temple City? A. Yes.

Q. How long had your wife been gone at that time? A. That is May, 1955, is it not?

Q. Yes.

A. And she had been gone since before Christmas of 1954. [45]

Q. Your daughter went north to Turlock then some time in the spring of 1955. Is that correct?

A. Yes.

Q. Did she return during the school vacation of 1955, some time between June and September?

A. Yes, sir.

Q. Did she reside with you? Did she have her place where she slept and where she kept her clothes and her effects at your home?



(Testimony of Lewis F. Blagg.)

A. Yes, sir.

Q. Did she sleep somewhere else during that time for several months during that summer vacation?

A. No; maybe a couple of days.

Q. When you were here before I thought I understood you to indicate, perhaps I was wrong, but will you tell me, I will ask you isn't it a fact when she came down in the summer vacation of 1955 she stayed with you only a day or two, then she went and lived with an aunt in nearby Temple City for the duration of the summer vacation? Isn't that correct?

A. She was with me over a day or two, because she spent about two weeks with her aunt.

Q. She was with you, in other words, all but two weeks?

A. Yes.

Q. That was 1955. [46]

Let me ask you the name of the lady in Turlock with whom she spent this time. That is Clara Sims, isn't it?

A. Right.

Q. What is Clara Sims' relation to Roberta?

A. Grandmother.

Q. Is she her maternal grandmother or paternal grandmother?

A. Maternal.

Q. In other words, Clara Sims is your wife, Isabelle's mother?

A. Right.

Q. And you made the arrangements with Clara Sims for your daughter, Roberta, to go live with her shortly after the divorce in 1955. Isn't that correct?

A. Yes, sir.

(Testimony of Lewis F. Blagg.)

Q. Have you been up to visit at Turlock since that time?      A. No; I haven't.

Q. You testified before on your interrogation that you understand that your daughter, Roberta now sees her mother over week ends; her mother living in Kerman. Are you certain of the distance between Kerman and Turlock?

A. No; I am not.

Q. It could be something less than your estimated 125 miles? [47]      A. Yes.

Q. Perhaps as little as 25 or 50?

A. I don't think so.

Q. Both of them are in the San Joaquin Valley?

A. Yes.

Q. And Kerman is west of Fresno and Turlock is northwest of Fresno?

A. Yes. Turlock is only about 10 miles from Modesto.

Q. Do you have some reason for saying that she did not see her mother in Kerman except during the last two or three months?

A. Yes, because the kids were more in touch with her than I was. Most of my information is secondhand. In other words, sir, frankly, I think she was away from there until the last two or three months, because Isabelle was living with a man who wasn't married——

Q. In other words, you don't know for certain that Isabelle didn't see Roberta after the period after May or June of 1955 until the last two or three months, do you?

(Testimony of Lewis F. Blagg.)

A. She must have seen her a few times.

Q. She did see her from time to time?

A. She must have gone up to Turlock to visit her own mother once or twice.

Q. Let's talk about the support. You told your attorney that you supported Roberta. How did you support [48] her? Let's begin as soon as she went north to Turlock. Did you take her up north to Turlock or did she go by herself or did someone come and get her?

A. I sent her up by train.

Q. You didn't go with her? A. No.

Q. Did you send a sum of money with her then?

A. Yes.

Q. How much? A. I wouldn't remember.

Q. Did you make an arrangement with Clara Sims to send a definite sum of money each month?

A. No; I didn't.

Q. Did you send a definite sum of money each month? A. No, sir.

Q. Did you send money at all? A. Yes, sir.

Q. How did you determine how much to send?

A. Well, it is on a ranch, and Clara just figured it out, how much her board and room was, I guess; then when she wanted extra money for clothes she would tell me.

Q. Did you pay her board and room?

A. Well, I mean, I paid for her school, her clothes and a small amount for her board and room. It wasn't anything like that \$20 a week in there or anything.

(Testimony of Lewis F. Blagg.)

Q. How much did you average paying on the support [49] for board and room?

A. I don't really know.

Q. Did you send a regular sum at all?

A. At the time we were talking about Clara said \$35 to \$40 a month was plenty, because that is as much money as they could get in an institution, you know, a County institution or something.

Q. Did you send that sum?

A. Approximately. As I say, there was more at times, because when she needed clothes, why, they would ask for more money.

Q. You would send the money up and the clothes would be purchased then. Is that correct?

A. Yes.

Q. When the clothes were purchased in Turlock, were they kept in Turlock?

A. They were kept in Turlock except when she came down here.

Q. When she came down here would she bring her luggage, and in it clothes you had purchased?

A. Yes.

Q. She has some clothes, you testified, down here?

A. Yes.

Q. Those are old clothes that she has outgrown, aren't they, for the most part?

A. They are outgrown this year, yes. [50]

Q. When she goes back to Turlock she takes with her all the clothes that she has that fits her. Isn't that correct?

A. Yes.

(Testimony of Lewis F. Blagg.)

Q. Does she keep some of her personal effects at all times up in Turlock, to your knowledge?

A. Well, yes. She has a couple of suitcases and a trunk that I bought her.

Q. And she keeps those things up there?

A. Yes.

Q. I want to show your counsel the original declaration of homestead.

Mr. Gordon: I have seen it.

Q. (By Mr. McDonnell): I want to show you a two-page typewritten document entitled, "Declaration of Homestead." Have you seen that document before, Mr. Blagg? Just answer my question yes or no, please.

A. Well, yes.

Q. Is that your signature at the bottom of the document?

A. Yes, sir.

Mr. McDonnell: I will offer this as Trustee's first in order, your Honor. I believe that would be "A".

The Referee: The Declaration of Homestead dated December 18, 1956, is being received in evidence as Trustee's Exhibit "A". [51]

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## TRUSTEE'S EXHIBIT A

### Declaration of Homestead

Be It Known that I, Lewis F. Blagg, a single man; hereby declare that I am at the time of the making of this Declaration actually residing on the premises

(Testimony of Lewis F. Blagg.)

hereinafter described and claim them as a home-stead.

The premises so claimed by me consist of the real property situated in Temple City, County of Los Angeles, State of California, and described as follows:

All of Lot 61 and the south westerly 10 ft. of Lot 62, Tract 11584, as recorded in Book 213/2 and 3 of Maps, in the office of the County Recorder of Los Angeles County, California, said property formerly being registered land entered on a memorial certificate M. H. 2129.

Said property consists of a 10-room residence and converted garage located at 11042 West Hondo Parkway, Temple City, California.

That I estimate the actual cash value of said premises exclusive of the business portion thereof which is located over the Bank at the rear, to be the sum of \$30,000.00.

In Witness Whereof, I hereunto set my hand this 18th day of December, 1956.

/s/ LOUIS F. BLAGG.

State of California

County of Los Angeles—ss.

Lewis F. Blagg, being first duly sworn, deposes and says:



(Testimony of Lewis F. Blagg.)

That he has read the above and foregoing Declaration of Homestead and that all of the facts therein stated are true.

/s/ LOUIS F. BLAGG.

Subscribed to and sworn to before me this 18th day of December, 1956.

[Seal]      /s/ MAURICE GORDON,  
Notary Public in and for Said  
County and State.

State of California

County of Los Angeles—ss.

On the 18th day of December, 1956, before me, a notary public in and for said county and state, personally appeared Lewis F. Blagg, known to me to be the person whose name was subscribed to the within instrument, and he acknowledged to me that he executed the same.

In Witness Whereof, I hereunto set my hand and seal the day and year first above written.

[Seal]      /s/ MAURICE GORDON,  
Notary Public in and for Said  
State and County.

[Endorsed]: Filed May 8, 1957, Referee.

(Testimony of Lewis F. Blagg.)

Q. (By Mr. McDonnell): I now lay before you a single page typewritten document with the legend, "Declaration of Abandonment of Homestead." Have you seen this document before? Just answer yes or no, please. A. Yes.

Q. And is your signature on it? A. Yes.

Mr. McDonnell: I will offer that as Trustee's next in order, your Honor.

The Referee: It will be received as Trustee's "B".

## TRUSTEE'S EXHIBIT B

### Declaration of Abandonment of Homestead

Know All Men By These Presents: That I, Lewis F. Blagg, do hereby declare that I am a single man and I do hereby abandon the homestead heretofore declared on the property and premises hereinafter described, the declaration whereof was recorded on the 18th day of December, 1956, under Document number 2862, in the office of the County Recorder of Los Angeles County, State of California.

Said premises herein referred to, and the homestead upon which is hereby abandoned, are situated in the County of Los Angeles, State of California, and described as follows, to wit:

All of Lot 61 and the southwesterly 10 feet of Lot 62, Tract 11584, as recorded in Book 213, Pages 2 and 3 of Maps, in the office of the

(Testimony of Lewis F. Blagg.)

County Recorder of said county and state, said property formerly being registered land entered on a memorial certificate M. H. 2129.

In Witness Whereof, I have hereunto set my hand this 19th day of December, 1956.

/s/ LEWIS F. BLAGG.

State of California

County of Los Angeles—ss:

On the 19th day of December, 1956, before me, a notary public in and for said county and state, personally appeared Lewis F. Blagg, known to me to be the person whose name was subscribed to the within instrument, and he acknowledged to me that he executed the same.

[Seal]      /s/ MAURICE GORDON,  
Notary Public in and for Said  
County and State.

[Endorsed]: Filed May 8, 1957, Trustee.

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Mr. McDonnell: May I see Exhibit 2, I believe it is, and Exhibit "A", please?

The Referee: Yes.

Q. (By Mr. McDonnell): I now lay before you the exhibit which has been marked Trustee's Exhibit "A", which is a Declaration of Homestead dated December 18, 1956. Do you see that, Mr. Blagg?

(Testimony of Lewis F. Blagg.)

A. Yes.

Q. I also lay before you a document which is Bankrupt's Exhibit 2 in evidence, which is a Declaration of Homestead dated the 19th day of December, 1956.

I call to your attention that Bankrupt's 2 says in part: "I, Lewis F. Blagg, do hereby declare that I am the head of a family, but that I am not married, and that my family consists of myself and a minor daughter." [52]

Do you see that? A. Yes.

Q. The second document, which is Trustee's Exhibit "A", says in part:

"I, Lewis F. Blagg, a single man hereby declare that I am, at the time of the making of this declaration, actually residing on the premises hereinafter described and claim them as a homestead."

The first document was on the 18th of December, when it was signed, and the next document was on the 19th. Was there any change in your residence status, that is, in the way in which you were living, between the 18th of December and the 19th of December?

Just answer yes or no.

A. No. This was a misunderstanding here.

Q. Mr. Blagg, do you have a mother? Is she living? A. No, sir.

Q. Do you have any relatives, such as a brother or a sister? A. Yes, sir.

Q. Do they live in California?

(Testimony of Lewis F. Blagg.)

A. Yes; three of them.

Q. Is it an aunt which your daughter Roberta visited during the summer vacation of 1955; is she a blood-relative of yours or a relation of your former wife's? [53]

A. She is a sister of my wife's brother, not a relative, that is, a blood relative of either of us.

Q. She is actually a relative by marriage?

A. Yes, sir. [54]

\* \* \*

### Redirect Examination

By Mr. Gordon:

Q. Mr. Blagg, will you describe or tell us, rather, the circumstances surrounding the execution of these two different homesteads: Exhibit "A," the original homestead dated December 18, 1956, in which you are described as a single man, and the one the day following, December 19, 1956, which I believe is Exhibit "B", or rather, [60] Objector's Exhibit 1. Can you tell us what occurred, if you know, that caused the change to be made the following day like that?

A. Well, Mr. Jones just didn't know I had children at the house or anything, and he set it up, and as soon as he found out about it the next day he said, "We will have to change it immediately." That was no—through no fault of his, because it was a rush, and he said, "Are you married?"

(Testimony of Lewis F. Blagg.)

I said, "No." And that is the way it went in, that I am not a married man.

Mr. Gordon: That is all.

### Recross-Examination

By Mr. McDonnell:

Q. On December 18, 1956, Mr. Blagg, did you know that your daughter Ann was married?

A. That is hard for me to remember, but I think I did. That is, I didn't know it straight out, but I think I had an idea.

Q. Did you on the 19th, the next day?

A. I guess—that was the day we filed it.

Q. It is the day of the second homestead.

A. I knew it the next day. That is when I called and I told Mr. Gordon she was 17 years old, and I called up and found out she was 18. [61]

Q. That is why you did not include her as one of the family of which you were the head. Is that right?

A. That is correct.

Mr. McDonnell: Nothing further.

### Redirect Examination

By Mr. Gordon:

Q. Upon whose advice did you not include her, Mr. Blagg?

A. I believe it was yours, Mr. Gordon.

Q. Did I give you my reason for my belief that she was not to be included?



(Testimony of Lewis F. Blagg.)

A. I think at the time you said, well, as soon as we found out she was 18, I believe you said she is now an adult, if she is married.

Mr. Gordon: That's all.

Mr. McDonnell: Nothing further.

The Referee: You may step down, Mr. Blagg.

Anything further gentlemen?

Mr. Gordon: Nothing further by way of evidence. [62]

\* \* \*

[Endorsed]: Filed August 21, 1957. Referee.

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[Title of District Court and Cause.]

### CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 77, inclusive, containing the original:

Debtor's Petition, filed 12/21/56

Orders of Adjudication and of General Reference  
Trustee's Report of Exempt Property

Objections to Report of Trustee

Referee's Memorandum Opinion re Objections to  
Trustee's Report of Exempt Property

Findings of Fact, Conclusions of Law re Objections to Trustee's Report of Exempt Property

Order on objections to Trustee's Report of Exempt Property

Petition for Review

Notice of filing Certificate on Review

Certificate on Review

Order Sustaining Referee on Review

Notice of entry of "Order Sustaining Referee on Review"

Notice of Appeal

Designation of Contents of Record on Appeal and Points to Be Relied Upon on Appeal

Designation of Additional Contents of Record on Appeal.

B. Bankrupt's Exhibits 1 and 2

Trustee's Exhibits A and B

C. One volume of Reporter's Transcript of Proceedings had on: 5/8/57

I further certify that my fee for preparing the foregoing record, amounting to \$1.60 has been paid by appellant.

Dated: February 26, 1958.

[Seal]                      JOHN A. CHILDRESS,  
Clerk.

By /s/ WM. A. WHITE,  
Deputy Clerk.

(Seal)

[Endorsed]: No. 15933. United States Court of Appeals for the Ninth Circuit. Lewis F. Blagg, Appellant vs. Irving I. Bass, Trustee in Bankruptcy of the Estate of Lewis F. Blagg, Bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed February 27, 1958.

Docketed: March 17, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

